

REMARKS

Claims 1-13 are pending in the application and claims 6-11 were previously withdrawn. Claims 1 and 2 have been amended, new claim 14 has been added. No new matter has been added. Reconsideration of the claims is respectfully requested.

In paragraph 4 on page 3 of the Office Action, claims 1-5, 12 and 13 are rejected under 35 U.S.C. §102 (e) as being anticipated by Bodley et al. (US Patent No. 7110535).

The Bodley reference is that owned by a common entity as defined under 35 USC sec 103c and thus may not be prior art. The assignee of Bodley is a wholly owned subsidiary of the assignee of the present application. Furthermore, the rejection under 35 USC 102e is in applicable because the claimed invention does not fall within sec (1) or (2) of that subsection. That question may also be moot as the amended claims clearly define around this reference, as set forth below.

The claimed invention defines a pair spaced apart opposing shells. Bodley has no such construction. The claimed invention transducer, the microphone and the ear hook are encapsulated in the housing in the closed state. In Bodley, the microphone, ear hook and microphone are never encapsulated.

In claim 14, the microphone is flexibly articulatable from an open and closed position. This is not possible in Bodley.

There are further arguments in favour of patentability, but they will be presented in an interview already scheduled for 10 Dec 2007. This response is being file to stop the clock on the response deadline, but it is respectfully requested that the examiner will withhold action on this case until after the interview.

CONCLUSION

In view of the amendments and reasons provided above, it is believed that all pending claims are in condition for allowance. The amendments clarify the patentable

invention without adding new subject matter. Applicant respectfully requests favorable reconsideration and early allowance of all pending claims.

If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicant's attorney of record, Michael B. Lasky at (952) 253-4106.

Respectfully submitted,

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